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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1936 7

No. ~~40~~ 1

THE ATLANTIC REFINING COMPANY,
APPELLANT,

vs.

COMMONWEALTH OF VIRGINIA

APPEAL FROM THE SUPREME COURT OF APPEALS OF THE STATE OF VIRGINIA

FILED APRIL 24, 1936.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 40

THE ATLANTIC REFINING COMPANY,
APPELLANT,

vs.

COMMONWEALTH OF VIRGINIA

APPEAL FROM THE SUPREME COURT OF APPEALS OF THE STATE OF VIRGINIA

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[fol. 1]

IN SUPREME COURT OF APPEALS OF VIRGINIA, AT RICHMOND

Record No. 1657

THE ATLANTIC REFINING COMPANY

versus

COMMONWEALTH OF VIRGINIA

Petition for Appeal from Order of State Corporation Commission

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To the Honorable Justices of the Supreme Court of Appeals of Virginia:

Your petitioner, The Atlantic Refining Company, a corporation organized and existing under the laws of the State of Pennsylvania, respectfully represents that it is aggrieved by a final order entered by the State Corporation Commission on November 14, 1934, whereby said Commission denied and dismissed, with costs, petitioner's claim for a refund of the sum of Five Thousand Dollars ($5,000) previously paid by it, under protest, into the treasury of the State of Virginia as an alleged entrance fee required by Section 207 of the Tax Code of Virginia, 1928, the payment of which was made a condition precedent to its obtaining a certificate of authority to do business in this State.

Your petitioner is advised that it is entitled, as a matter of right, to have such order reviewed by this Honorable Court under and by virtue of the provisions of Section 3734 of the Code of Virginia, 1930, and respectfully asks that such a review be granted. There is filed herewith a copy of the record in the hearings before the State Corporation

[fol. 2] Commission, but this petition is not to be regarded as petitioner's opening brief, since such brief will be filed in due course.

Statement of Facts

The Atlantic Refining Company, hereafter sometimes called the "petitioner," is a foreign corporation organized and existing under the laws of the State of Pennsylvania, having procured its charter from said State on the 29th day of April, 1870. It is and has been for many years one of the major oil companies, selling gasoline and petroleum products in forty-seven States of the United States and in numerous foreign countries. At all times since its organization the petitioner has had its principal place of business in Philadelphia, Pennsylvania, where its executive, administrative, legal and accounting offices are maintained, and from which place all matters of substantial importance with respect to its business, including that done in Virginia, are directed.

On or about the 19th day of January, 1930, the petitioner applied to the State Corporation Commission for a certificate of authority to do business in Virginia, and duly presented to said Commission the written power of attorney required by Section 3847 of the Code of Virginia, 1919, as amended, the duly authenticated copies of its charter required by said section of the Code, and a certificate from the Comptroller of the Commonwealth of Virginia showing its payment into the treasury of Virginia of the entrance fee required by Section 207 of the Tax Code of Virginia, 1928, all of which was required of the petitioner before it was permitted to engage in business within the State of Virginia. Said entrance fee, in the amount of $5,000, was paid into the treasury under protest and duress, and in order to avoid the penalties prescribed, by Section 3848 of the Code of Virginia, 1919, as amended, which said statute provides, among other things, for the imposition of a fine of not less than $10 nor more than $1,000, for each business transaction within the State of a foreign corporation which has not obtained a certificate of authority, and further provides that no such corporation shall recover any money or property or enforce any contract in any court without first obtaining said certifi-

cate. On January 22, 1930, such a certificate of authority to transact business within the State of Virginia was duly issued and delivered to the petitioner, which has, since that date, been engaged continuously in the general business of distributing and selling gasoline and petroleum products in this State.

For some years prior to the 22nd day of January, 1930, [fol. 3] petitioner had transacted and carried on an interstate business in Virginia, but had not transacted or carried on any intrastate business within said State in its own name. (R., p. 170.) However, from about April 30, 1934, petitioner through the medium of subsidiary corporations had engaged continuously in intrastate business within Virginia. On said date petitioner purchased the entire capital stock of The Red "C" Oil Company, a Maryland corporation, then doing business in Virginia and other nearby States, and which, on August 3, 1922, had obtained a certificate of authority to do a general gasoline and petroleum products business in Virginia. At all times between April 30, 1934, and January 22, 1930, the date on which petitioner received its certificate of authority, The Red "C" Oil Company was engaged continuously in Virginia in the business of selling and marketing said products in both interstate and intrastate commerce, and throughout this period the petitioner owned the entire capital stock of The Red "C" Oil Company. On or about January 22, 1930, the petitioner acquired title to the entire properties and business of The Red "C" Oil Company in the State of Virginia, and about that date took charge of said properties and business, and subsequent thereto, under date of February 12, 1930, The Red "C" Oil Company surrendered its certificate of authority to do business in Virginia and withdrew from the State (R., p. 171).

From April 30, 1923, until January, 1929, The Red "C" Oil Company owned the entire capital stock of the Richmond Oil Company, a Virginia corporation, which was engaged principally in an intrastate business of selling gasoline and other petroleum products through a gasoline bulk station, and several gasoline service stations and tank wagons owned by it in Virginia. In January, 1929, said Richmond Oil Company discontinued active business in this State, and its property and assets, with the exception of its filling stations and its bulk station, were conveyed to The